FACT SHEET

Proposed NPDES General Permit for Discharges from Petroleum Bulk Stations and Terminals in Texas (TXG340000)

SUMMARY: EPA Region 6 is proposing to issue a general NPDES permit authorizing discharges of facility waste water and contact storm water from petroleum bulk stations and terminals in Texas. This permit covers facilities having Standard Industrial Classification (SIC) Code 5171.

As proposed, the permit has the following requirements: Daily Maximum limits of 15 mg/l Total Petroleum Hydrocarbons, 0.05 mg/l benzene, 0.5 mg/l Total BTEX and a pH limit of 6.0 to 9.0 Standard Units. There is also a requirement of no acute toxicity as determined by requiring greater than 50 % survival in 100 % effluent using a 24 hour acute test. In addition, the permit has limits on arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver and zinc as contained in Texas Natural Resource Conservation Commission Regulations for Hazardous Metals (30 TAC 319, Subchapter B), as well as requirements for no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil. There is also the requirement to develop and implement a pollution prevention plan for the storm water discharges authorized by this permit.

ADDRESSES: Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. For further information, contact Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7516. The proposed general permit and this Fact Sheet can be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm.

Supplementary information in this Fact Sheet is organized as follows:

I. Legal Basis

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permit proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, TSS and fecal coliform, CWA section 301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable guidelines identifying the BPT, BCT, and BAT standards to which specific industrial categories and subcategories are subject. Until such guidelines are published, however, CWA section 402(a)(1) requires that EPA determine appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment.

The Agency may issue "general permits" applicable to a class of similar dischargers within a discreet geographical area. See NRDC v. Costle, 568 F.2d 1369 (D.C. Cir. 1977) and 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits, but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, as supplemented by EPA regulations; e.g., 40 CFR 124.58. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or

general NPDES permit.

II. Regulatory Background

National guidelines establishing BCT and BAT standards have not been promulgated for discharges from petroleum bulk stations and terminals. The BCT and BAT requirements for these discharges have, therefore, been established using best professional judgement, as required by CWA section 402(a)(1). BPT and BCT requirements for these discharges were previously established by Region 6 using best professional judgement in a general NPDES permit TXG340000 issued July 12, 1984 (49 FR 28446) which expired July 19, 1989.

III. Permit Coverage

This permit authorizes discharges of facility waste water and contact storm water from petroleum bulk stations and terminals to Waters of the United States in Texas. This permit does not cover petroleum bulk stations and terminals which are part of a petroleum refinery or facilities which store or transfer non-petroleum products such as organic, inorganic or toxic chemicals. This permit does not authorize the discharge of domestic sewage.

> Contact storm water means storm water which comes into contact with any raw material, product, by-product, co-product, intermediate, petroleum fuel, or waste material.
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> Facility waste water means any liquids which are accidentally released from storage, transfer or loading facilities, liquids from equipment cleaning or vehicle maintenance, any water and hydrocarbon mixtures drawn from storage, transfer, or loading facilities, or other similar waste water associated with petroleum fuel handling. Facility waste water shall not include domestic sewage.
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> Petroleum bulk stations and terminals mean establishments primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from bulk liquid storage facilities.
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> Petroleum fuel means gasoline, diesel fuel, fuel oil, fuel additives, kerosene and jet fuel, or any other petroleum-based material having physical and chemical properties similar to the listed materials.

A. Notice of Intent (NOI) To Be Covered

Dischargers desiring coverage under this general NPDES permit

must submit a Notice of Intent (NOI) which shall include the legal name and address of the operator, the location of the discharge (including the street address, if applicable, and the county of the facility for which the notification is submitted), the name of the receiving water, and a description of the types of waste waters being discharged. This NOI must be submitted within 30 days of the effective date of this permit for existing discharges and, for new discharges, at least 30 days before beginning the discharge.

B. Individual Permits

The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(3). These criteria include:

1. the discharge(s) is a significant contributor of pollution,
2. the discharger is not in compliance with the terms and conditions of the general permit,
3. a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source,
4. effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit,
5. a Water Quality Management Plan containing requirements applicable to such point sources is approved, or
6. circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

IV. Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT)

The limitations and conditions of this permit have been designed to comply with the technology-based standards of the Clean Water Act (BCT/BAT). The expired NPDES general permit TXG340000 (49 FR 28446) covering these facilities established BCT using best professional judgement as equal to BPT. The parameters and limits designated as BCT in that permit were oil and grease of 30 mg/l monthly average, and, for storm water discharges, a no discharge of free oil limit as measured by a visual sheen test. The appropriateness of the BCT limit for oil and grease of 30 mg/l monthly average was not revisited in today’s proposed action because the TNRCC Rule 321, Subchapter M, for discharges from petroleum bulk stations, has a limit of 15 mg/l Total Petroleum

Hydrocarbons (TPH) as a daily maximum. This TPH limit is more stringent that the oil and grease limit and, therefore, will be included in the proposed permit. A pH limit of 6.0 to 9.0 standard units is added as a BCT limit in the current proposed permit. This limit is also required by the TNRCC Rule 321, Subchapter M.

The parameters selected to limit as BAT are benzene and total BTEX (benzene, toluene, ethyl benzene and xylenes). The BAT limits for these parameters are 0.05 mg/l benzene (daily maximum), and 0.5 mg/l Total BTEX (daily maximum). These BCT and BAT limits are economically achievable and involve no additional cost for compliance, since these limits currently must be met in order to comply with the TNRCC General Rule for discharges from petroleum bulk stations and terminals, 30 TAC 321, Subchapter M.

In addition, the requirement to develop and implement a pollution prevention plan for the storm water discharges covered by this permit constitute BCT/BAT. The requirements of this plan are stated in Section VIII of this Fact Sheet. This requirement should involve no additional cost for compliance since it is required by the NPDES Storm Water Multi-Sector General Permit for storm water discharges associated with petroleum bulk stations and terminals.

V. Water Quality Requirements

EPA is required under 40 CFR 122.44(d) to include any requirements necessary to achieve State water quality standards as established under section 303 of the Clean Water Act. For the discharges authorized by this permit, there is one requirement in addition to the BCT/BAT requirements, discussed above, and the “Other State Requirements”, discussed below, necessary to achieve compliance with Texas Water Standards (31 TAC 307.2 - 307.10). That requirement is contained in 31 TAC 307.6(e)(2)(B) and specifies no acute toxicity as determined by requiring greater than 50 % survival in 100% effluent using a 24 hour acute test. This no acute toxicity requirement is also contained in the TNRCC Rule 30 TAC 321, Subchapter M. The combination of the BCT/BAT technology requirements and the other State requirements (see below), plus the toxicity requirements, will assure that State water quality standards, both for aquatic life protection and human health protection, will be met.

VI. Other State Requirements

EPA is required under 40 CFR 122.44(d) to include any more stringent limits established under State law or regulations in accordance with section 301(b)(1)(C) of the Clean Water Act. The

following additional limits are added to the permit in accordance with 301(b)(1)(C). Limits on arsenic, barium, cadmium, chromium, copper, manganese, mercury, nickel, selenium, silver and zinc are established as required by the Texas Natural Resource Conservation Commission Regulations for Hazardous Metals (30 TAC 319, Subchapter B). In addition, a limit on lead of .25 mg/l, which is more stringent than that contained in the 30 TAC 319, Subchapter B regulations, is required in the Subchapter M Rule for petroleum bulk stations and is included in this proposed general permit. A limit of 15 mg/l Total Petroleum Hydrocarbons (TPH) as a daily maximum is also contained in the 30 TAC 321, Subchapter M Rule and is included in this proposed general permit.

VII. Monitoring

40 CFR 122.44(i) requires monitoring for each pollutant limited in a permit to assure compliance with the permit limits. The frequency of this monitoring shall be established on a case by case basis, but shall in no case be less than once per year. The monitoring frequency in this permit for TPH, benzene, Total BTEX Total Lead and pH is established as once per week using grab samples. If compliance with a limit is demonstrated for a period of two years, the minimum frequency shall be reduced to once per two weeks upon the permittee’s submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to once per week. The monitoring requirements for lead will be once per year upon the permittee’s submission of a certification that none of the substances stored at the facility include refined petroleum products or petroleum fuels containing lead or lead additives. If at a later date, refined petroleum products or petroleum fuels containing lead or lead additives are stored, the permittee must notify the regulatory agency and the lead monitoring frequency will become once per week. The discharge flow rate must be estimated daily. These requirements are the same as those in the TNRCC Rule 30 TAC 321.155 for these same types of discharges. The monitoring frequency for the metals, except for lead, is established at once per year, the minimum allowed by 40 CFR 122.44(i), using grab samples. If discharge occurs less frequently than the minimum monitoring frequency, then monitoring shall be conducted for each discharge event. For a discharge consisting of contact storm water only, the sample shall be obtained within 60 minutes after discharge begins. The monitoring frequency for the no acute toxicity requirement is established at once per 6 months. This is the frequency established by the NPDES Storm Water Multi-Sector General Permit for the no acute toxicity requirement for storm water discharges associated with petroleum bulk stations.

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VIII. Summary of Permit Requirements

	Daily Max Limit
Total Petroleum Hydrocarbons	15 mg/l
Benzene	0.05 mg/l
Total BTEX	0.5 mg/l
Total Lead	0.25 mg/l
pH	6.0 - 9.0 Std. Units

	Monthly Average	Daily Max	Single Grab
Arsenic	.1 mg/l	.2 mg/l	.3 mg/l
Barium	1.0 mg/l	2.0 mg/l	4.0 mg/l
Cadmium (Inland Waters)	.05 mg/l	.1 mg/l	.2 mg/l
Cadmium (Tidal Waters)	.1 mg/l	.2 mg/l	.3 mg/l
Chromium	.5 mg/l	1.0 mg/l	5.0 mg/l
Copper	.5 mg/l	1.0 mg/l	2.0 mg/l
Manganese	1.0 mg/l	2.0 mg/l	3.0 mg/l
Mercury	.005 mg/l	.005 mg/l	.01 mg/l
Nickel	1.0 mg/l	2.0 mg/l	3.0 mg/l
Selenium (Inland Waters)	.05 mg/l	.1 mg/l	.2 mg/l
Selenium (Tidal Waters)	.1 mg/l	.2 mg/l	.3 mg/l
Silver	.05 mg/l	.1 mg/l	.2 mg/l
Zinc	1.0 mg/l	2.0 mg/l	6.0 mg/l

There shall be no acute toxicity as determined by requiring greater than 50 % survival in 100 % effluent using a 24 hour acute test.

Pollution Prevention Plan

A Pollution Prevention Plan shall be prepared and implemented for each facility covered by this permit. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of contact storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in contact storm water discharges at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan as a condition of this permit. The plan shall be signed in accordance with Part II of the permit (Signatory Requirements) and be retained onsite at the facility that generates the storm water discharge in accordance with Part II (Retention of Records) of the permit.

The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit that are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the contents of the plan, or in otherwise achieving the general objectives of controlling pollutants in the contact storm water discharges.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility’s storm water pollution prevention plan.

2. Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage. A site map indicating the location of each point of discharge of storm water associated with industrial activity, an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries with a prediction of the direction of flow, each existing structural control measure to reduce pollutants in storm water runoff, surface water

bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part c (Spills and Leaks), below, have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, storage areas for vehicles and equipment with actual or potential fluid leaks, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas, storage areas and all monitoring locations. The site map must also indicate the types of discharges contained in the drainage areas of the outfalls. In order to increase the readability of the map, the inventory of the types of discharges contained in each outfall may be kept as an attachment to the site map.

b. Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; method and location of onsite storage or disposal; dirt or gravel parking areas for storage of vehicles to be maintained; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and Leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling Data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk Identification and Summary of Potential Pollutant Sources. A narrative description of the potential pollutant

sources from the following activities associated with vehicle and equipment maintenance and equipment cleaning: fueling stations; maintenance shops; equipment or vehicle cleaning areas; paved dirt or gravel parking areas for vehicles to be maintained; loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processes, and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and, for each potential source, any pollutant or pollutant parameter (for example, oil and grease, etc.) of concern shall be identified.

3. Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good Housekeeping. Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed:

(i) Vehicle and Equipment Storage Areas - The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility shall consider the use of drip pans under vehicles and equipment, indoor storage of the vehicles and equipment, installation of berming and diking of this area, use of absorbents, roofing or covering storage areas, cleaning pavement surface to remove oil and grease, or other equivalent methods.

(ii) fueling Areas - the plan must describe measures to prevent or minimize contamination of the storm water runoff from fueling areas. The facility shall consider covering the fueling area, using spill and overflow protection and cleanup equipment, minimizing runon/runoff of storm water to the fueling area, using dry cleanup methods, collecting the storm water runoff and providing treatment or recycling, or other equivalent measures.

(iii) Material Storage Areas - Storage units of all materials must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled. The plan must

describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility shall consider indoor storage of the materials, installation of berming and diking of the areas, minimizing runon/runoff of storm water to the areas, using dry cleanup methods, collecting the storm water runoff and providing treatment or other equivalent methods.

(iv) Vehicle and Equipment Cleaning Areas - The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility shall consider performing all cleaning operations indoors, covering the cleaning operation, ensuring that all washwaters drain to the intended collection system, collecting the storm water runoff from the cleaning area and providing treatment or recycling or other equivalent measures.

(v) Vehicle and Equipment Maintenance Areas - the plan must describe measures to prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment maintenance. The facility shall consider performing all maintenance activities indoors, using drip pans, maintaining an organized inventory of materials used in the ship, draining all parts of fluids prior to disposal, prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems, using dry cleanup methods, collecting the storm water runoff from the maintenance area and providing treatment or recycling, minimizing runon/runoff of storm water areas or other equivalent measures.

b. Preventive Maintenance. A preventive maintenance program shall involve routine inspection and maintenance of storm water management devices (for example, cleaning oil/water separators, catch basins, drip pans, vehicle-mounted drip containment devices) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill Prevention and Response Procedures. Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a quarterly basis. The following areas shall be included in all inspections: storage area for vehicles and equipment awaiting maintenance, fueling areas, vehicle and equipment maintenance areas (both indoors and outdoors), material storage areas, vehicle and equipment cleaning areas, and loading and unloading areas. Follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist should be considered by the facility.

e. Employee Training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, and material management practices. The pollution prevention plan shall identify how often training will take place; at a minimum, training must be held annually (once per calendar year).

f. Record Keeping and Internal Reporting Procedures. A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Sediment and Erosion Control. The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. Management of Runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges (see Item 2 of this section - Description of Potential Pollutant Sources) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales

and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to contact storm water discharges shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures, such as recycle ponds, identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Item 2 of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with Item 3 of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

c. A report summarizing the scope of the evaluation, personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Item 4.b, above, shall be made and retained as part of the storm water pollution prevention plan for at least 3 years after the date of the evaluation. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with signatory requirements of the permit.

d. Where compliance evaluation schedules overlap with inspections required under Item 3.d, above, the compliance evaluation may be conducted in place of one such inspection.

IX. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Clean Water Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the Texas Natural Resources Conservation Commission.

B. Endangered Species Act

As stated previously in this Fact Sheet, the proposed limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service on this determination.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES

permit application) and 2040-0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed previously in this Fact Sheet, compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law. . ."

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments.

For UMRA purposes, “small governments” is defined by reference to the definition of “small governmental jurisdiction” under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) “Small governmental jurisdiction” means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.